

Memorandum 99-80

Jurisdictional Classification of Good Faith Improver Claim

In August, the Law Revision Commission approved a tentative recommendation on *Jurisdictional Classification of Good Faith Improver Claim* (enclosed with Commissioners' copies of this memorandum), which proposes to clarify the law on the proper jurisdictional classification of a case that includes a good faith improver claim. The comment period for the tentative recommendation has ended, but the Commission has not received any comments. This lack of response is not surprising, because the Commission's proposal would affect few cases and would not be a substantive change in the law.

Although the Commission has not received any comments, the staff recommends revision of the proposal, to clarify the jurisdictional classification of a case that includes *both* a good faith improver complaint *and* a good faith improver cross-complaint. This could be accomplished by inserting the language shown in boldface below:

Code Civ. Proc. § 871.3 (amended). Good faith improver

SECTION 1. Section 871.3 of the Code of Civil Procedure is amended to read:

~~871.3. A good faith improver may bring an action in the superior court or, subject to Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. (a) An action for relief under this chapter shall be treated as an unlimited civil case, regardless of the amount in controversy and regardless of whether a defendant cross-complains for relief under this chapter. Any other case in which a defendant cross-complains for relief under this chapter shall be treated as a limited civil case if the cross-complaint is defensive and the case otherwise satisfies the amount in controversy and other requirements of Section 85.~~

(b) In every case, the burden is on the good faith improver to establish that the good faith improver is entitled to relief under this

chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

Comment. Section 871.3 is amended to clarify the jurisdictional classification of a good faith improver claim. This is declarative of existing law.

If a good faith improver claim is asserted by way of complaint, the case is an unlimited civil case regardless of the amount in controversy. This treatment is consistent with the equitable nature of such a claim. See *Southern Pac. Transp. Co. v. Superior Court*, 58 Cal. App. 3d 433, 129 Cal. Rptr. 912 (1976) (no right to jury trial under good faith improver statute); *Okuda v. Superior Court*, 144 Cal. App. 3d 135, 139-41, 192 Cal. Rptr. 388 (1983) (court has “broad equitable jurisdiction” under good faith improver statute). **If a defendant in the case cross-complains for relief under this chapter, the case remains an unlimited civil case.**

If, however, a good faith improver claim is asserted by way of cross-complaint, **and the complaint does not include a good faith improver claim**, the proper treatment depends on whether the cross-complaint is defensive and whether the case satisfies the amount in controversy and other requirements for a limited civil case. A case may be transferred from municipal court to superior court if it includes a good faith improver cross-complaint that is not defensive. See Section 396 (court without jurisdiction); see also Cal. Const. art. VI, § 10 (original jurisdiction of trial courts); Sections 85 (limited civil cases) & 85.1 (original jurisdiction in limited civil case) & Comments. Likewise, a limited civil case in a unified superior court may be reclassified if it includes a good faith improver cross-complaint that is not defensive. See Section 403.030 (reclassification of limited civil case by cross-complaint); see also Section 403.040 (motion for reclassification). For guidance on whether a cross-complaint is defensive, see *Jacobson v. Superior Court*, 5 Cal. 2d 170, 173, 53 P.2d 756 (1936) (in an action on an insurance policy, cross-complaint seeking cancellation of the policy merely showed plaintiff was in default and not entitled to recover); 2 B. Witkin, *California Procedure Courts* § 255, at 330 (4th ed. 1996); see also Section 86(b)(2). For authority to sever a cross-complaint, see Section 1048.

See Section 88 (unlimited civil case). See also Section 32.5 (jurisdictional classification).

Subject to these revisions, the staff recommends that the Commission approve the proposal as a final recommendation, for printing and submission to the Legislature.

Respectfully submitted,

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